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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 143

JOHN M. MORRIS, ADMINISTRATOR,
Petitioner,

vs.

FIRST NATIONAL BANK, ET AL.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA AND BRIEF IN SUPPORT THEREOF.

CHAS. W. ANDERSON,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

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FIRST NATIONAL BANK, ET AL.,

Respondents

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42 S. E. 2d 215, Decided February 4, 1947, Rehearing denied March 20, 1947. Number ——, —— Term, 1947.

Comes now your petitioner, within time provided by law, and rules of this Court, in aforesaid case, and prays that a Writ of Certiorari be granted, directed to the Supreme Court of Georgia, to review and correct the errors alleged herein, to have been committed by that Court in rendering the judgment sought to be reviewed here (R. 13-14).

Attached to this petition is a certified copy of all the record, both in the lower court, and in the Supreme Court of Georgia, material to a clear understanding of the errors alleged herein (R. 1 to 16).

Separately, a Brief of Law is presented in support of this petition, citing pertinent State and Federal Statutes, and United States Constitutional Provisions, applicable to this case (R. 3, 4, 6, 7).

The Supreme Court of Georgia is the highest Court of Georgia, and last court in which petitioner could assert and urge the subject matter and the timely claimed and urged Federal Rights, R. 3, 4, 6, 7, and its judgment is a final adjudication.

Summary

Thomas C. Hamilton, citizen of United States, and of Georgia, died, resident in Fulton County, Georgia, in 1932, intestate, possessed of Real and Personal property, in excess of $20,000.00. A brother of aforesaid Thomas C. Hamilton, procured the appointment of the First National Bank as administrator upon the estate of aforesaid Thomas C. Hamilton, with Fidelity Deposit and Guaranty Company of Maryland, as bondsman of said bank (R. 1). Said bank reduced the estate aforesaid to cash, by sales, paid debts of estate, expenses of administration, and distributed balance of cash to brother of Thomas C. Hamilton, and nieces and nephews of said Thomas C. Hamilton. The bank then petitioned the Ordinary of Fulton County, Georgia, for dismissal as administrator upon aforesaid estate, and for the exoneration of its bondsman. Upon the allegation of said petition, that the bank had properly performed its administrative duties in the estate, and had paid balance of the estate to heirs of Thomas C. Hamilton, the Ordinary dismissed the Administrator, and exonerated its bondsman, in 1935 (R. 3, 4, 5).

Short Statement of Matter Involved in This Case

In June 1946, John M. Morris, as administrator upon estate of Matilda Hamilton Hinkle, who died intestate, in (R. 8) Fulton County, Georgia, in 1928, brought an equitable suit for accounting against the First National Bank and its bondsman, Fidelity and Deposit Guaranty Company of Maryland, in Superior Court of Fulton County,

Georgia, alleging the following facts: 1. The appointment of Morris, petitioner, in (R. 1, 9) June 1946, administrator upon the estate of Matilda Hamilton Hinkle, who was a daughter and only heir of Thomas C. Hamilton, upon whose intestate estate the First National Bank had administered and had been discharged in 1935, as described in Summary hereof, *supra*. 2. Morris, as administrator upon the estate of Matilda Hamilton Hinkle, made a demand upon the bank (R. 8) aforesaid for all cash in their hands belonging to the estate of Thomas C. Hamilton, as belonging to estate of Matilda Hamilton Hinkle. This demand was refused. 3. Morris specifically charged the bank, through its agents and attorneys, with (R. 2, 3, 4, 5) knowledge, while administering upon the estate of Thomas C. Hamilton, that the said Hamilton had a daughter, his only heir, Matilda Hamilton Hinkle, who predeceased her father, dying in 1928, intestate, childless, leaving a husband, who was living at the time bank administered upon said Hamilton's estate. 4. Having this knowledge, the Bank should have held the cash belonging to estate of Thomas C. Hamilton, after payments of debts and expenses of administration, for benefit (R. 4) of the estate of his daughter aforesaid, your petitioner's intestate. 5. To pay this money rightfully by law, belonging to daughter's estate, [redacted] to those not entitled thereto, was a wrong and a fraud upon the rights of the daughter's estate (R. 4), for which the bank should be held to account, to your petitioner for benefit of creditors and heirs of said Matilda Hamilton Hinkle's estate. 6. Morris charged that for the bank to pay wrongfully the money in question, to those not entitled thereto, and to refuse to pay the money in question, to administrator, for benefit of husband, as sole heir of Matilda Hamilton Hinkle was to deprive husband illegally of his property, without due process of law, and was to deny him of equal protection of the laws,

rights given him under the 14th Amendment to (R. 3, 4, 6, 7) United States Constitution. 7. Morris charged the bank with fraud and intentional wrong in all its doings as administrator upon the estate of Thomas C. Hamilton aforesaid, and (R. 2, 3, 4, 5, 6, 7, 8) prayed that the dismissal of the bank as administrator aforesaid, and the exoneration of bank's bondsman, be voided, and (R. 6, 8) that they be held liable to account to your petitioner, as "executor de son torts", for money rightfully belonging to his intestates' estate. To the above equitable petition for an accounting, the First National Bank, and its bondsman, Fidelity Deposit and Guaranty Company of Maryland, filed a joint, general demurrer, which was sustained, and the petition dismissed (R. 9, 10).

This case was then carried to the Supreme Court of Georgia (R. 10, 12), who took jurisdiction and affirmed the judgment of the lower court February 4, 1947, and denied a Rehearing March 20, 1947 (R. 13, 14).

Jurisdiction of the Supreme Court of United States

This Honorable Court's jurisdiction is invoked under U. S. Judicial Code, Section 237 (b), 250, Title 28, U. S. C. A., Section 344 (b). 360, and under U. S. C. A., Title 8, Section 42, and under 14th Amendment to United States Constitution, Guaranteeing Equal protection of laws, and protection from deprivation of property without due process of law, and guarantee to all citizens same right to inherit property. In such a case as this, this court will take jurisdiction. *Buchanan* v. *Warley,* 245 U. S. 60, 78.

Jurisdiction Supreme Court of Georgia, Article 6, Section 17, Paragraph 1, Article 6, Section 2, Paragraph 4, Constitution of Georgia, Georgia Laws 1945, Pages 41, 43.

1933 Georgia Code, Section 113-902; 113-903 (2, 3, 4, 5) 113-1001.

Questions Presented

1. Did the Supreme Court of Georgia by the application of an arbitrary and discriminatory rule to the petition and demurrer, in deciding questions numbered 2, 3, 4, 5, 6, 7, *infra* by denial of the statutory right of inheritance to the petitioner's intestates' estate, and all parties at interest, which said Court has at all times heretofore accorded to other litigants before said Court under like and similar circumstances and status, and allowing persons in the second degree to inherit in preference to those entitled to property within the first degree, and thereby denied the equal right of inheritance guaranteed under 14th Amendment as defined by an act of Congress, U. S. C. A., Title 8, Section 42, and thereby denied the intestate her right of inheritance, without due process of law, and without compensation, and denied the equal protection of laws, claimed and asserted timely in the instant case.

2. Is husband the representative of his deceased, childless, intestate wife?

3. Is the husband of a deceased childless, intestate wife, her heir?

4. If husband of a deceased, childless, intestate wife, is her representative heir, would husband be entitled to property in question?

5. If husband of such wife is her representative and heir, would he have a right to have an administrator upon his wife's estate appointed?

6. If so, would such administrator have right to administer upon property in question?

7. To whom would the property in question belong, after estate's debts are paid and expenses of administration of this estate?

Why Writ of Certiorari Should Be Granted

This writ should be granted in this case because,

1. By a judgment of the highest court of final resort in Georgia, Supreme Court of Georgia, has denied to petitioner, and his intestates' estate, and heir thereof, a substantial property right of over $20,000.00 "same right to inherit property as other heirs in Georgia have been allowed to do," in contravention of U. S. C. A., Title 8, Section 42, "all citizens of the United States shall have same right to inherit" . . . "Real and Personal property." *Buchanan* v. *Warley*, 245 U. S. 60, 78.

2. This judgment under attack, attempts to Make a Law Contrary to Plain Law of Georgia, found in Georgia Code and announced in prior decisions of the Supreme Court of Georgia.

3. Your petitioner raised his Constitutional Rights timely in all the courts wherein this case has been considered, (R. 3, 4, 6, 7, 14 (4)).

4. The questions raised have probably never been decided by this Court in any previous decision, and the decision is probably contrary to applicable decisions of this Court. And this Court should clarify the law upon such an important feature of Georgia laws in regard to Descent and Distribution under Intestacy.

WHEREFORE, your petitioner prays that the Writ of Certiorari be granted to the Supreme Court of Georgia to review the record and correct the errors in the case of *Morris*, Administrator, v. *First National Bank, etc.*, Administrator, et al., 42 SE (2) 215.

CHAS. W. ANDERSON,
Attorney at Law for Petitioner.

P. O. Box 4322, Atlanta 2, Georgia.
Presented: June 1947.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 143

JOHN M. MORRIS, ADMINISTRATOR, PETITIONER,

v

FIRST NATIONAL BANK OF ATLANTA, ADMINISTRATOR, ET AL., RESPONDENTS

42 SE (2) 215 *Morris*, Administrator, v. *First National Bank*, etc., et al., decided Feb. 4, 1947, Rehearing denied March 20, 1947, in the Supreme Court of Georgia.

Brief of Law in Support of Petition for Certiorari

While not exhaustive we cite the following authorities. Title 8 U. S. C. A., Section 42; 14th Amendment of Federal Constitution.

> "Every citizen of the United States shall have the same right to inherit, acquire, hold, lease, or convey real or personal property."

Judicial Code, Section 237, Title 28, U. S. C. A., Section 344 (b), Section 350;
245 U. S. 60, 78, *Buchanan* v. *Warley;*
Hague v. *Committee for Industry*, 307 U. S. 496;
Fiske v. *Kansas* 274 U. S. 380 (1);
U. S. v. *Cruikshank*, 92 U. S. 542 (2);
Expart Riggins, 134 Fed. S. 404 (4);

Barider v. *Connally*, 113 U. S. 27;
So. Ry Co. v. *Green*, 216 U. S. 400;
Trux et al., v. *Corrigan*, 257 U. S. 312;
No. P. Ry Co. v. *No. Dakota*, 236 U. S. 585, 593;
Jones Nat. Bank v. *Yates*, 240 U. S. 541, 552;
Kansas City So. Ry Co. v. *Albers Com. Co.*, 223 U. S. 573;
Cedar Rapids Gas Light Co. v. *Cedar Rapids*, 223 U. S. 665, 668;
Ward v. *Krinsky*, 259 U. S. 503;
Pierre v. *Louisiana*, 306 U. S. 354;
Virginia v. *Rives*, 100 U. S. 313, 319;
Ward, et al., v. *Love County*, 253 U. S. S1722 (1);
Gardner v. *Brunswick*, 197 Ga. 170;
Shippen Lumber Co. v. *Elliott*, 124 Ga. 699;
Anderson v. *Shepherd*, 285 Ill. 544 (121 NE 215); 2 C. J. S. p. 57; 16 C. J. S. 1118 Sec 557;
As to fraud: *White* v. *Roper*, 176, 380;
Jacobs v. *Poe*, 18 Ga. 346;
Pollock v. *Cox*, 108 Ga. 430 (2);
Blount v. *Dean, Admr.*, 187 Ga. 494;
Gormerly v. *Watson*, 177, 177 Ga. 763.

Georgia Constitution of 1946, Article 6, Section 1, paragraph 1, Article 6, section 2, paragraph 4, Georgia laws 1945 pp. 41, 43. Laws of Inheritance, distribution, administration.
Code Section 113-901, et seq. Particularly Sections 113-902, 113-903; 113-1001; Ga. Laws 1871-2 p. 48; Ga. Laws 1882-3 p. 47; Ga. Laws 1859 p. 35.
Pace v. *Klink*, 51 Ga. 221, 222, 223;
Jackson v. *Butts*, 148 Ga. 315, 316;
Cavenaugh v. *Ainchbacker*, 36, 506;
Urquhart v. *Oliver*, 56 Ga. 346;
Gibson v. *Carriker*, 82 Ga. 47 (2a);

*Willia*s v. *Rawlins,* 10 Ga. 492;
Liptro v. *Holmes,* 1 Kelly Ga. 384;
White. *Roper, supra;*
*Wiggi*s v. *Blount,* 33 Ga. 492;
*Ander*n v. *Burney,* 147 Ga. 141, 142;
Barha v. *McKneely,* 89 Ga. 812;
*Foste*v. *McGinnis,* 4 Ga. 377;
Guess . *Morgan,* 196 Ga. 265;
*Mande*ille v. *Mandeville,* 35 Ga. 243;
Morga v. *Woods,* 69 Ga. 592;
*Mullig*n v. *Mulligan,* 39 SE (2) 699;
Murph v. *Pound,* 12 Ga. 278;
*Newbo*n v. *Cogburn,* 30 Ga. 295;
Shelto *Wright,* 25 Ga. 636;
Tedde v. *Stiles,* 15 Ga. 1, 2;
Battle. *Royster Guano Co.,* 155 Ga. 322 (118 SE 343);
Stanle v. *Warner Bros. Pictures,* 64 Ga. App. 228 (12 SE 2) 441);
Broon Leg. Mx. 7th edition, Stare decisis, p. 147;
Article 6, Section W 2, paragraph 7, Georgia Constitution, Ga. Laws 1945 pp. 44-46,
"The lecisions of the Supreme Court shall bind the Cout of Appeals as precedents."

Respectfully submitted,

CHAS. W. ANDERSON,
Attorney at Law for Petitioner.

Brief of Law

The judgment of Supreme Court notes 3 contentions made in (R. 13, 4) this case. 1. Daughter would have taken her father's wole estate, the property in question, if she had been alive when her father died. The Court did not answer that contention. 2. Since daughter died before her father,

her husband is her representative and heir, and was entitled to the estate in question. The Court did not deny the husband in this case is heir of his wife. The Court only answered the contention "The husband is representative of his wife," by denying the husband is representative of the wife in question. In order to show the errors of the judgment in question, we take up each holding. * * *

Judgment R. 13—Held. 1. Before the death of the ancestor, persons who would become heirs on his death are only heirs apparent; and no inheritance which can descend to their children passes to heirs apparent who die before the ancestor. *Beall* v. *Beall*, 8 Ga. 210; *Reed* v. *Norman*, 157 Ga. 183 (R. 13). Neither of the above cases are in point.

Beall v. *Beall*, 8 Ga. 210 was a case where a man had a wife and adopted 2 children, when he died, wife sought to exclude 2 adopted children, saying she was heir of husband, and he had no right to adopt the 2 children to share his estate with her. Court said she was not his heir until he died, and he could make the children his heirs by adoption * * *. That case was not in point with holding of this case.

The case of *Reed* v. *Norman*, 157 Ga. 183 was a deed case where a child died before a parent, leaving children, and these children took the property their deceased parent would have taken, if the parent had been living at the death of its parent. This case does not sustain the point made in holding of this court, but holds the very opposite, for when a child dies before its parent, leaving children. The children take in place of their dead parent, when the grandparent dies which is directly opposite to holding in the above judgment.

Judgment Held 2. Brothers and sisters of intestate stand in second degree, and inherit, if there is no wife, child or representative of a child.

Held 3. The words "Representative of a child, as used in code, Section 113-903 (5) means child of a deceased child or a lineal descendant, and does not include the husband of a child who predeceased the intestate. *Raburn* v. *Bradshaw,* 124 Ga. 552 (R. 13, 14). *Murphy* v. *Murphy,* 151 Ga. 438.

The case of *Raburn* v. *Bradshaw,* misquotes code section 3355, par. 5, 6 by substituting lineal descendant, where word representative is used as is used in present section 113-903 (5). The Court has no right to substitute words in a code section. That is making law, not interpreting law. Hence, it is not proof that representative of a child means child of a child. This was a contest between brothers and sisters as to right of administration.

The case of *Murphy* v. *Murphy,* 151 Ga. 438, was a deed case, where it said, the words representative of a child, as used in deed, meant child and did not include a husband. Of course, in a deed, representative of a child means a child, But There Is No Deed in present case to exclude the husband. All parties being intestate in present case, no deed or will being involved in present case, representative does not exclude the husband. So, this case of *Murphy* v. *Murphy,* 151 Ga. 438, being a deed case, has no bearing in this case, there being no deed, but a pure descent by intestacy, hence that case is not in point with present case.

Our Court has said that a husband of a deceased, childless, intestate wife, is her sole heir and "representative" and entitled to her "whole estate" and there is no need for such husband to go into Ordinary's Court to have himself appointed administrator upon his wife's estate, for he is Her Sole Heir and Representative, and entitled to her whole estate. *Jackson* v. *Butts,* 148 Ga. Bottom page 315 and top page 316.

What is wife's whole estate? Wife may make a will disposing of 1. Her estate absolute, and 2. Her Estate in Expectancy. "So her whole estate is composed of her estate absolute or her estate in expectancy. *Cavenaugh* v. *Ainchbacker*, 36 Ga. 506; *Urquhart* v. *Oliver*, 56 Ga. 346.

What is an estate in expectancy, to which a husband is entitled? Estate in expectancy is the interest every man's heirs has in the property he has an absolute title to; to wit, the Right to Inherit, if he dies intestate, "This is an expectancy. A man's heirs stand in his shoes, take his place. *Varner* v. *Boynton*, 46 Ga. 513-514. Since an heir such as husband, taking her whole estate, would be entitled to the expectancy which his wife had in her father's estate when she died, and at her father's death, the expectancy vested in daughter's estate, and husband took it as part of her estate.

The Federal Right Enters This Suit in Following Way

By law of Georgia, when wife lies, leaving a husband or children They Are Her Heirs. They share her estate equally. *Gibson* v. *Carreker*, 82 Ga. 47 (2 (a)) 1933 Ga. Code 113-902.

Husband and children being heirs of a deceased wife, sharing her estate equally, each has equal right with the other to inherit.

We call this Court's Special Attention to this statement of how a federal right is involved in this case.

Prince's Digest of Georgia Laws, Page 235, showing table of Descents, that where a father dies, intestate, his wife and children are First Degree Heirs. This table does not show what would be the case if a wife died, intestate, leaving a husband and children, but down at bottom of page, it says "For conciseness, only one sex is mentioned,

but the other must in all cases be understood as intended." So, therefore, it would be true. If a wife dies leaving a husband and children, they would be her first degree heirs. 1933 Code of Georgia, 113-902, a wife dying intestate, leaving a husband and children, they are her heirs, and share her whole estate equally. See *Gibson* v. *Carreker,* 82 Ga. 47 (a).

Being first degree heirs, these corrolaries are indisputable:

1. If a wife dies intestate, leaving husband and children, they are her first degree heirs, and share whole estate equally, ~~any dead child would take part, parent would have taken if living.~~

2. If a parent died intestate, leaving only a child, the child would be sole heir of First Degree and would take the whole estate, including estate in expectancy, such as involved in present case, as the judgment under attack properly held (R. 13).

3. If a wife died intestate, leaving only a husband, he would be her sole heir of First Degree, "Her Representative, Entitled to Her Whole Estate", a part of which is the estate in exceptancy, property in question. In such a case, there is no need for such husband to go into Ordinary's Court and have himself appointed administrator upon his wife's estate for he is her sole heir, Representative, entitled to her whole estate. *Jackson* v. *Butts,* 148 Ga. Bottom page 315 and top of page 316.

Therefore, it was patent error for the Supreme Court of Georgia, to hold in present case "Husband is not representative, but a child would be", when both are heirs of First Degree, and should have same right to inherit intestates' whole estate.

This is a denial of same right to inherit to one of the two First Degree Heirs. . . . Which is both . . . a deprivation of property without due process of law, and a denial of equal protection of laws, deprivation of property without compensation, for the correction of such wrongs to property, this Honorable Court will take jurisdiction and correct such wrongful errors, as it has a right to do under U. S. C. A., Title 8, Section 42, "Every citizen of the United States shall have same right to inherit, Purchase, Hold, Lease, Sell and Convey Real and Personal Property."

This Honorable Court has countless times assumed jurisdiction, to correct wrongs done to persons in violation of their Rights under 14th Amendment. See 245 U. S. 60, *Buchanan* v. *Warley*.

For the foregoing reasons which cannot be legally disputed under Georgia Laws, and Laws of the United States, the judgment under attack, should be reversed, and direction given to Supreme Court of Georgia, in this case, to give justice to petitioner, and those at interest with him, the husband heir of petitioner's intestate.